

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL SPECIALTY PHARMACY, LLC,

Plaintiff,

V.

SAMEER PADHYE, an individual,
BENJAMIN D. BROWN, an individual, and
DOES 1 to 49, inclusive,

Defendant.

Case No. 5:23-cv-04357-PCP

**[PROPOSED] STIPULATED
PROTECTIVE ORDER AS
MODIFIED**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of

1 Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
3 as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
8 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
9 transcripts, and tangible things), that are produced or generated in disclosures or responses to
10 discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
12 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
13 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,
14 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s
15 competitor.

16 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
17 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party
18 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
19 restrictive means.

20 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
23 but are retained to represent or advise a party to this action and have appeared in this action on
24 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.10 Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

1 2.12 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
3 storing, or retrieving data in any form or medium) and their employees and subcontractors.

4 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
7 Producing Party.

8 **3. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only Protected Material
10 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
11 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
12 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
13 However, the protections conferred by this Stipulation and Order do not cover the following
14 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
15 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
16 publication not involving a violation of this Order, including becoming part of the public record
17 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
18 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
19 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
20 of Protected Material at trial shall be governed by a separate agreement or order.

21 **4. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations imposed by this
23 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
24 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
25 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
26 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
27 time limits for filing any motions or applications for extension of time pursuant to applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
3 Non-Party that designates information or items for protection under this Order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. To the
5 extent it is practical to do so, the Designating Party must designate for protection only those parts
6 of material, documents, items, or oral or written communications that qualify – so that other portions
7 of the material, documents, items, or communications for which protection is not warranted are not
8 swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
11 encumber or retard the case development process or to impose unnecessary expenses and burdens
12 on other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated for
14 protection do not qualify for protection at all or do not qualify for the level of protection initially
15 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
16 mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
18 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
19 Discovery

20 Material that qualifies for protection under this Order must be clearly so designated before
21 the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
24 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
25 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to
26 each page that contains protected material. If only a portion or portions of the material on a page
27 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
28 by making appropriate markings in the margins) and must specify, for each portion, the level of

1 protection being asserted.

2 A Party or Non-Party that makes original documents or materials available for inspection
3 need not designate them for protection until after the inspecting Party has indicated which material
4 it would like copied and produced. During the inspection and before the designation, all of the
5 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or portions thereof,
8 qualify for protection under this Order. Then, before producing the specified documents, the
9 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.
11 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
12 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
13 margins) and must specify, for each portion, the level of protection being asserted.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
15 Designating Party identify on the record, before the close of the deposition, hearing, or other
16 proceeding, all protected testimony and specify the level of protection being asserted. When it is
17 impractical to identify separately each portion of testimony that is entitled to protection and it
18 appears that substantial portions of the testimony may qualify for protection, the Designating Party
19 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
20 to have up to 21 days to identify the specific portions of the testimony as to which protection is
21 sought and to specify the level of protection being asserted. Only those portions of the testimony
22 that are appropriately designated for protection within the 21 days shall be covered by the provisions
23 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition
24 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be
25 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
27 other proceeding to include Protected Material so that the other parties can ensure that only
28 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
2 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
3 – ATTORNEYS’ EYES ONLY.”

4 Transcripts containing Protected Material shall have an obvious legend on the title page that
5 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
6 (including line numbers as appropriate) that have been designated as Protected Material and the
7 level of protection being asserted by the Designating Party. The Designating Party shall inform the
8 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
9 day period for designation shall be treated during that period as if it had been designated “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
11 the expiration of that period, the transcript shall be treated only as actually designated.

12 (c) for information produced in some form other than documentary and for any other tangible
13 items, that the Producing Party affix in a prominent place on the exterior of the container or
14 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY. If only a portion or portions of the information
16 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
17 portion(s) and specify the level of protection being asserted.

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items does not, standing alone, waive the Designating Party’s
20 right to secure protection under this Order for such material. Upon timely correction of a
21 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
22 in accordance with the provisions of this Order.

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
25 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
27 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
28 challenge a confidentiality designation by electing not to mount a challenge promptly after the

1 original designation is disclosed.

2 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
3 by providing written notice of each designation it is challenging and describing the basis for each
4 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
5 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
6 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
7 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
8 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
9 Party must explain the basis for its belief that the confidentiality designation was not proper and
10 must give the Designating Party an opportunity to review the designated material, to reconsider the
11 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
12 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
13 has engaged in this meet and confer process first or establishes that the Designating Party is
14 unwilling to participate in the meet and confer process in a timely manner.

15 6.3 Judicial Intervention. ~~If the Parties cannot resolve a challenge without court~~
16 ~~intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil~~
17 ~~Local Rule 7 (and in compliance with Civil Local Rule 79.5, if applicable) within 21 days of the~~
18 ~~initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process~~
19 ~~will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a~~
20 ~~competent declaration affirming that the movant has complied with the meet and confer~~
21 ~~requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a~~
22 ~~motion including the required declaration within 21 days (or 14 days, if applicable) shall~~
23 ~~automatically waive the confidentiality designation for each challenged designation. In addition, the~~
24 ~~Challenging Party may file a motion challenging a confidentiality designation at any time if there is~~
25 ~~good cause for doing so, including a challenge to the designation of a deposition transcript or any~~
26 ~~portions thereof. Any motion brought pursuant to this provision must be accompanied by a~~
27 ~~competent declaration affirming that the movant has complied with the meet and confer~~
28 ~~requirements imposed by the preceding paragraph.~~

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
2 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
4 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
5 to retain confidentiality as described above, all parties shall continue to afford the material in
6 question the level of protection to which it is entitled under the Producing Party's designation until
7 the court rules on the challenge.

If the Parties cannot resolve a challenge without court intervention, then they shall follow the
procedures set forth in Judge van Keulen's Civil and Discovery Referral Matters Standing Order and
present the dispute in a joint letter addressed to Judge van Keulen.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
12 the categories of persons and under the conditions described in this Order. When the litigation has
13 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
14 DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and in
16 a secure manner¹ that ensures that access is limited to the persons authorized under this Order.

17 7.2 **Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise ordered
18 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
19 information or item designated "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
21 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
22 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
23 attached hereto as Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
25 to whom disclosure is reasonably necessary for this litigation and who have signed the

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28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected
Material in password-protected form.

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
3 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
4 Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and Professional
7 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
10 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

11 **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
13 bound by the court reporter and may not be disclosed to anyone except as permitted under this
14 Stipulated Protective Order.

15 (g) the author or recipient of a document containing the information or a custodian or other
16 person who otherwise possessed or knew the information.

17 **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information**
18 **or Items.** Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
19 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
22 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
23 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
24 attached hereto as Exhibit A;

25 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
26 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
27 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

28 (c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to Designated House Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may become involved, in any competitive decision-making.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,² and (6) identifies (by name and number of the case,

² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the

1 filing date, and location of court) any litigation in connection with which the Expert has offered
2 expert testimony, including through a declaration, report, or testimony at a deposition or trial, during
3 the preceding five years.³

4 (b) A Party that makes a request and provides the information specified in the preceding
5 respective paragraphs may disclose the subject Protected Material to the identified Designated
6 House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a
7 written objection from the Designating Party. Any such objection must set forth in detail the grounds
8 on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the
10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
11 within seven days of the written objection. If no agreement is reached, the Party seeking to make
12 the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil
13 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from
14 the court to do so. Any such motion must describe the circumstances with specificity, set forth in
15 detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably
16 necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means
17 that could be used to reduce that risk. In addition, any such motion must be accompanied by a
18 competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the
19 extent and the content of the meet and confer discussions) and setting forth the reasons advanced by
20 the Designating Party for its refusal to approve the disclosure.

21 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
22 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
23 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material

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26 Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality
27 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating
Party regarding any such engagement.

28 ³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to
the termination of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY
CONFIDENTIAL – ATTORNEYS' EYES ONLY" information.

1 to its Designated House Counsel or Expert.

2 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
3 **OTHER LITIGATION**

4 If a Party is served with a subpoena or a court order issued in other litigation that compels
5 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
8 of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
10 other litigation that some or all of the material covered by the subpoena or order is subject to this
11 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
13 Designating Party whose Protected Material may be affected.⁴

14 If the Designating Party timely seeks a protective order, the Party served with the subpoena
15 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court
17 from which the subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking protection in that
19 court of its confidential material – and nothing in these provisions should be construed as authorizing
20 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

21 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
22 **THIS LITIGATION**

23 (a) The terms of this Order are applicable to information produced by a Non-Party in
24 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this
26 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions

27 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from
which the subpoena or order issued.

1 should be construed as prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
3 Party's confidential information in its possession, and the Party is subject to an agreement with the
4 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

5 1. promptly notify in writing the Requesting Party and the Non-Party that some
6 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

7 2. promptly provide the Non-Party with a copy of the Stipulated Protective
8 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
9 the information requested; and

10 3. make the information requested available for inspection by the Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court within 14
12 days of receiving the notice and accompanying information, the Receiving Party may produce the
13 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
14 seeks a protective order, the Receiving Party shall not produce any information in its possession or
15 control that is subject to the confidentiality agreement with the Non-Party before a determination
16 by the court.⁵ Absent a court order to the contrary, the Non-Party shall bear the burden and expense
17 of seeking protection in this court of its Protected Material.

18 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
20 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
21 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
22 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
23 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
24 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
25 Be Bound" that is attached hereto as Exhibit A.

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28 ⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party
and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order that
7 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
8 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
9 information covered by the attorney-client privilege or work product protection, the parties may
incorporate their agreement in the stipulated protective order submitted to the court.

10 **12. MISCELLANEOUS**

11 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
12 its modification by the court in the future.

13 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
14 no Party waives any right it otherwise would have to object to disclosing or producing any
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
16 Party waives any right to object on any ground to use in evidence of any of the material covered by
17 this Protective Order.

18 14.3 Filing Protected Material. Without written permission from the Designating Party or
19 a court order secured after appropriate notice to all interested persons, a Party may not file in the
20 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
21 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
22 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
23 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected
24 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
25 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
26 Rule 79-5 is denied by the court, then the Receiving Party may file the Protected Material in the
27 public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the court.

13. FINAL DISPOSITION

1 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
2 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
3 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
4 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
5 the Protected Material is returned or destroyed, the Receiving Party must submit a written
6 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
7 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material
8 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
9 abstracts, compilations, summaries or any other format reproducing or capturing any of the
10 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
11 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
12 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
13 and expert work product, even if such materials contain Protected Material. Any such archival
14 copies that contain or constitute Protected Material remain subject to this Protective Order as set
15 forth in Section 4 (DURATION).
16

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: December 4, 2024

/s/ Nitoj P. Singh, Dhillon Law Group Inc.
19 Attorneys for Plaintiff National Specialty Pharmacy LLC

20 DATED: December 4, 2024

/s/ Richard H. Poulsen, Law Office of Richard H. Poulsen
21 Attorneys for Defendant Sameer Padhye

PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 DATED: December 4, 2024


24 Hon. Susan van Keulen
25 United States Magistrate Judge
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EXHIBIT A

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ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *National Specialty Pharmacy, LLC, v. Padhye et al.*, United States District Court for the Northern District of California, Case No. 5:23-cv-4357-SVK. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

13

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

16

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

20

Date: _____

City and State where sworn and signed: _____

23

Printed name: _____
[printed name]

25

Signature: _____
[signature]

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